IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 102 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURYAKANT NARNBHAI PATEL

Versus

SHANTILAL NARANDAS PATEL & 3 OTHERS.

Appearance:

MR RC KODEKAR & Mr. Premal Joshi for Petitioner

MR NITIN M AMIN for opponents No. 2 & 3.

Ms. Katha Gajjar, APP for opponent No. 4-State.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 12/07/1999

ORAL JUDGEMENT

Being aggrieved by the order dated 12th January 1999, passed by the learned Judicial Magistrate (F.C.) at Kadi, refusing to admit the cheque in evidence exhibiting the same, accepting the objection raised by the opponents Nos. 1 to 3, the present revision application is preferred by the original complainant who has filed Criminal Case No. 1405 of 1997 relating to the offence punishable under Sec. 138 of the Negotiable Instruments Act. Necessary facts to appreciate rival contentions may

in brief be stated.

2. The petitioner, respondents Nos. 1 to 3 Shaileshbhai Ishwarbhai, Naranbhai Babubhai, Bharatbhai Bhagwandas, Tulsibhai Dahyabhai Parikh and Maheshbhai Gunvantrai Mehta formed the partnership firm in the name and style "Shri Krishna Petrochemicals", the office of which was situated in G.I.D.C. at Viramgam. On 5-11-95 Bharatbhai, Tulsibhai & Maheshbhai retired as partners. Remaining 6 partners continued the partnership business. As agreed at that time, the share of (1) petitioner, (2) Shaileshbhai & (3) Naranbhai was collectively fixed at 25% while the share of opponents Nos. 1 to 3 was collectively fixed at 75%. Later on the petitioner, Shaileshbhai and Naranbhai decided to retire. A notice to that effect was given on 27-8-97. All the three desiring to retire had invested Rs. 13,34,800/-. The amounts of remuneration to be given to each of the three partners at the rate of Rs. 5,000/- p.m. had also become due. In all Rs. 25,54,800/- were due. The same were demanded. In reply dated 12.9.97 to the notice opponents Nos. 1 to 3 accepted the liability. The dispute was then referred to two arbitrators (1) Kanjibhai Patel & (2) Popatbhai Patel. The opponents agreed to pay Rs. 25,54,000/-. The opponents in Nilkanth Lodge gave a cheque for Rs. 15,00,000/- to the petitioner on 15-9-97. It was drawn on Dena Bank, Ashram Road Branch, Ahmedabad. On 15-9-97 the same was tendered at Bank of India, Kadi Branch at Kadi with which the petitioner was having his account. On 18-9-97 the cheque was returned because of insufficient fund. A notice was then given to opponent on 20-9-97. After the service of notice the opponents Nos. 1 to 3 replied on 29-9-97. They replied evasively stating that they had not given the cheque referred to in the notice, and they were not liable to pay. The petitioner with no option lodged the complaint being Cri. Case No. 1405/97 against opponents Nos. 1 to 3 in the court of Judicial Magistrate (F.C.) at Kadi relating to the offence punishable u/s. 138 of the Negotiable Instruments Act (for short "the Act").

3. Pertaining to the charge the evidence of the petitioner was being recorded at Ex.10 on 12-1-99. Stating his case, the petitioner tendered the cheque in evidence. The petitioner made it clear that the cheque he had brought bore the signature of opponent No.1 and the same was presented in Bank of India, Kadi Branch. It was bounced owing to insufficient fund. The learned Judicial Magistrate (F.C.) at Kadi who was recording the evidence did not give exhibit to the cheque and admit the same in evidence, but cheque was taken on record as

Mark-A, because the advocate for the opponents Nos. 1 to 3 objected to being admitted in evidence as it was not duly proved. The advocate for the petitioner made his submissions. Hearing both as stated above, the ld. Magistrate gave mark and did not admit the cheque in evidence agreeing with the ld. advocate for the opponents Nos. 1 to 3. The order dated 12-1-1999 came to be recorded in the deposition (Ex.10) itself. Being aggrieved by the said order refusing to admit the cheque in evidence, the petitioner has preferred this Revision Application.

4. Assailing the order of the learned Judge, Mr. Premal Joshi, the learned advocate for the petitioner submits that the learned Magistrate has overlooked the significance of the cheque, a base of the complaint. The objection raised by the opposite party was ill-based, but it carried through at the hands of the ld. Magistrate. The cheque being the negotiable instrument it was necessary to give exhibit. The same was also duly proved. He then urged to correct the error of the ld. Magistrate allowing this Revision Application. In reply, the learned advocate, Mr. Nitin Amin submits that this revision application is not maintainable at all because the order in question is the interlocutory order and so in view of Section 397(2) of the Criminal Procedure Code the powers conferred cannot be exercised. He also supported the impugned order. On behalf of opponent No.4, it is contended that the cheque is not duly proved and so the order in question was quite just & proper. The ld. APP also supported Mr. Nitin M. Amin, the ld. advocate for the opponents Nos. 1 to 3.

5. The crucial point raised for consideration is whether Revision Application is competent in law against the order of the lower Court refusing to exhibit and admit the document in evidence, or exhibiting and admitting the document in evidence. I will now deal with the point raised.

6. Whether the order in question can be said to be the interlocutory is the question posed before me for consideration. The expression "interlocutory order" is not defined in Cr.P. Code. In order to judge whether the particular order is interlocutory or otherwise, the Court has to, making every endeavour, find out whether the order in question is interlocutory order. If it is found that the order passed is purely interim or temporary in nature which does not decide or touch the important rights and liabilities of the parties and give a final shape to a particular point at a particular stage

during the course of the hearing, the same can be termed `interlocutory order'. If the order substantially affects the rights and liabilities of the parties, it would not be the interlocutory order. It may also be stated that intermediate or quasi-final order which determines a particular issue finally at any stage of the hearing will not fall within the ambits of `interlocutory order'.

7. When the court finds that a particular document tendered in evidence by the witness is duly proved in accordance with the provisions of the Evidence Act or the provisions of other Statutes applicable, the Court may exhibit the same so that the same can be considered while disposing of the matter finally and if it finds that the same is not duly proved, it may refuse to admit the same in evidence. Two decisions, throwing light on the proposition, may be referred to. In the case of Indra Nath Guha v. State of West Bengal - 1979 Cri.L.J. NOC 129 (CAL.), when likewise question was raised with regards to the admissibility of the oral evidence, it is held that the order concerning the admissibility of oral evidence is an interlocutory order and not the final order. This decision can mutatis mutandis be made applicable to the documentary evidence also. In Manohar Nath Sher v. State of J. & K. - 1980 CRI.L.J. 292, it is held that order allowing or disallowing the production of the document does not put an end to proceedings in which the order is made. Such an order is only a step in the proceeding and it relates to a procedural matter and does not purport to decide the rights of the parties. Such an order is the interlocutory order and revision against the same is not maintainable. These decisions abundantly make it clear that the order qua admissibility or non-admissibility is the interlocutory order and not the final order determining the rights and liabilities of the parties finally because subsequently in case the document is admitted, either of the parties can question the genuineness of the document and in that case it is open to the Court to accept or discard the document having due regard to the facts and circumstances on record. If the Court refused to admit the document in evidence on the ground that it is not duly proved, the party may further put necessary question to the witness if the evidence of that witness is not over, or may examine another witness to prove the document, keeping Sections 45, 47, 67 & 73 in mind or may put necessary question to the opposite party & his witness if not examined till that stage and prove the document. If the document is not admitted in evidence because it is not duly proved, the rights & obligations of the parties are

not finally decided or no legal complexion can be said to have been given. The finality in the matter comes into being when appreciating the entire evidence on record and considering the cumulative effect the points that arise for consideration are determined and Judgment is being delivered. In view of such law, the order in question is the interlocutory order. This revision application, against the order in question is, therefore, in view of Section 397(2) of the Criminal Procedure Code, not maintainable.

8. When this Revision Application is not maintainable, it will not be just & proper on my part to dissect the merits & demerits of the impugned order. Further examination-in-chief of the petitioner is not over as the time was sought to challenge the order by this Revision Application. The petitioner has the opportunity to state about the proof of cheque if further questions are asked to him. He will also get the chance to examine the witness to prove the cheque, or if required he will have a chance to put necessary questions to the witnesses if examined in defence. In view of the matter, no opinion is expressed regarding legality of the impugned order.

9. For the aforesaid reasons, this application, being not competent, is hereby dismissed. Notice discharged.

******

(rmr).